

INITIAL APPEARANCE ON A RULE 5 REMOVAL MATTER

[Use this form if a petition has been filed alleging that the defendant has been arrested on a federal warrant from another district on a petition to revoke, a complaint, an indictment, or an information]

[Note: *If you have any doubts about the defendant's ability to speak and understand English, then consider using a certified interpreter in accordance with 18 U.S.C. § 1827. If a certified interpreter is used, then no record needs to be made about the interpreter's qualifications. Be sure to swear the interpreter.*]

1. “This is the case of the United States of America versus (*name of defendant*). Are you (*defendant's name*)? I am (*state your name*).”
2. *[Tell the defendant]* “You have been arrested on a warrant out of the *[charging district]* on a charge *[summarize the charge]* That district wants you to appear there to face this/these charge(s).

[Ask the defendant] “Would you please state our full name? How old are you? How far did you school?”

[Where it does not appear English is the defendant's native language, say] “Is (*Spanish*) your native language? Are you able to hear and understand what the interpreter is saying to you in (*Spanish*)? If you have problems hearing or understanding anything that comes up during this hearing, would you please let me know?”

[Ask the defendant] “Within the past 24 hours, have you used or taken any **alcohol, drugs, or medication?**” *[If “yes,” then say]* “Do you think this might affect your ability to understand the legal matters we’ll be talking about at this hearing today?”

3. *[Ask the defendant]* “Do you have a copy of the warrant and the petition/complaint/indictment/information?” *[If not, make sure a copy of the*

warrant and the petition/complaint/indictment/information is provided to the defendant.] “I now will tell you about certain of your constitutional rights.”

[ADVICE OF RIGHTS]

4. “You have the right to remain silent. This means you don’t have to say anything to anyone. If you give up that right and make a statement, the prosecutor can, and probably will, use everything you say against you. Therefore, I strongly suggest that you not say anything to anyone unless you and your lawyer decide it’s in your best interests to do so. If you’ve already given a statement, you don’t have to say anything else. If you decide to go ahead and make a statement, you have the right to stop at any time.”
5. “Do you understand your right to remain silent?”
6. “You also have the right to be represented by a lawyer at every stage of this case, including in connection with this removal hearing. If you want a lawyer but can’t hire one, I’ll appoint one to represent you. If I appoint a lawyer to represent you, the lawyer would represent only you in this case, but the court would pay the lawyer’s fees and expenses.”
7. “Do you understand?”

[REPRESENTATION]

8. “Are you able to hire your own lawyer?” [If “yes,” then go to paragraph 8(c). If “no,” then say] “Would you like me to appoint a lawyer to represent you?” [If “yes,” then ask] “Has the defendant completed a financial affidavit?” [and go to paragraph 8(a) or 8(b), as appropriate. If “no,” then have the defendant complete a financial affidavit. Review the financial affidavit and go to paragraph 8(a) or 8(b).]

(a) [If the defendant **qualifies** for court-appointed counsel, then say] “I’ve reviewed your financial affidavit, and find that you’re entitled to court-appointed counsel. I hereby appoint (name of lawyer) to represent you. Mr./Ms. [name of lawyer] will represent you at this hearing here today, and

during any further proceedings in this court. When you appear in [*charging district*], you will need to have a different lawyer appointed to represent you.”[Go to *paragraph 11*.]

(b) [*If the defendant does not qualify for court-appointed counsel, then say*] “I find the defendant is not entitled to court-appointed counsel based on (*state reason, such as level of income or available assets*).” [*Ask the defendant about his/her plans for retaining a lawyer, then, go to paragraph 11.*]

[REMOVAL]

9. “As I’ve told you, you’re here because you were arrested on a warrant out of the [*charging district*]. The government has asked me to order your removal to that district [, *but if both you and the prosecutor agree, the prosecution of this charge could, pursuant to Federal Rule of Criminal 20, be transferred to the Northern District of Iowa.*] What’s the defendant’s position on removal to the [*charging district*]?” [*Ordinarily, the defendant will sign a form waiving a removal hearing and agreeing to be returned to the charging district. If the defendant waives a removal hearing, go to paragraph 11. If the defendant does not waive a removal hearing, to paragraph 10.*]
10. [*Either hold a removal hearing immediately, or schedule a removal hearing within a short period of time.*]

[DETENTION]

11. “What’s the government’s position on detention?” [*If the government does not ask for detention, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her lawyer, and this would conclude the hearing. If the government asks for detention, then go to paragraph 12.*]
12. “Does the defendant want a detention hearing here, in this district, or does (s)he want to reserve the right to request a detention hearing in the [*charging district*]?” [*Use your judgment on whether set a detention hearing here or*

to order the defendant removed immediately, with any detention hearing to take place in the charging district.]

13. *[If you release the defendant, say]* “If you violate your bond, I could issue in a warrant for your arrest, revoke your pretrial release, and have you prosecuted for contempt. If you commit a crime while on release, you could be given an additional sentence of up to 10 years in prison. Tampering with, threatening, or attempting to intimidate an informant, witness, juror, or officer of the court is punishable by up to 10 years in prison. Failure to appear is punishable by up to 15 years in prison.”

[ADJOURNMENT]